STATE OF MICHIGAN

COURT OF APPEALS

HOWARD RASCH,

Plaintiff/Counterdefendant-Appellant,

v

COVINGTON PARK, L.L.C.,

Defendant/Counterplaintiff-Appellee.

and

WENDELL C. FLYNN,

Defendant-Appellee,

and

FORSYTHE DEVELOPMENT COMPANY, PENNWAY INVESTMENT COMPANY, IRENE EAGLE, ANTHONY VITTIGLIO, MARY VITTIGLIO, CALVIN SHUBOW, and MILDRED SHUBOW,

Defendants.

UNPUBLISHED
April 1, 2003

No. 236803
Wayne Circuit Court
LC No. 99-923513-CH

Before: Jansen, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

This case involves claims to quiet title to certain real property. Plaintiff Howard Rasch filed suit seeking a judicial decree that he obtained title to the property by virtue of a tax deed and by adverse possession. Defendant Covington Park filed a countercomplaint to quiet title, arguing in part that plaintiff failed to perfect title. Plaintiff thereafter filed a motion for partial summary disposition. The lower court denied plaintiff's motion for partial summary disposition and granted defendants Flynn and Covington Park summary disposition under MCR 2.116(I)(2). Plaintiff now appeals as of right. We affirm but remand to the trial court for a determination of plaintiff's rights, if any, to reimbursement of taxes paid.

The disputed property consists of over seven acres of wooded land in the city of Romulus. Defendant Forsythe,[1] defendant Pennway,[2] and defendants Vittiglios[3] were the last grantees in the chain of title to the property. In 1974, defendants Forsythe and Pennway conveyed 1.107 acres of the property to the city of Romulus. In May 1976, the state of Michigan conducted a tax sale, and in 1977, issued a tax deed for the property to plaintiff for the unpaid 1973 local property taxes assessed against the entire property.

After receiving the tax deed, plaintiff allegedly attempted to serve reconveyance notices to the various parties in interest, and in 1981, obtained certified notices from the Wayne County Treasurer and thereafter recorded the tax deed. Plaintiff thereafter did nothing to quiet title until filing the instant action. Defendant Covington Park, whose representative is defendant Flynn, acquired the interests of defendants Forsythe, Pennway and Vittiglio by way of quitclaim deeds in 1998. Defendant Covington Park paid the property taxes for the 1994 through 1998 tax years. Plaintiff filed the instant action in 1999, asserting ownership under the tax deed and by adverse possession, and thereafter filed a motion for partial summary disposition under MCR 2.116(C)(7). Defendant Pennway also filed a motion to set aside the quitclaim deed signed by defendant Eagle, on behalf of defendant Pennway, to defendant Covington Park on the basis that defendant Flynn misled defendant Eagle.

The trial court granted summary disposition in favor of defendants Flynn and Covington Park pursuant to MCR 2.116(I)(2). In rendering its decision, the court determined that plaintiff had failed to properly serve notice of redemption on defendant Pennway and the city of Romulus. Therefore, the court found that plaintiff was not entitled to title based on the tax deed because defendant Pennway's redemption rights remained outstanding. The court further found that all defendants had not been effectively disseized of the land, and therefore, a cause of action for recovery of the property had not accrued and the time had never started to run on plaintiff's adverse possession claim. Finally, the court denied defendants Pennway and Eagle's motion to set aside the quitclaim deed, finding that although defendant Flynn may have misled defendant Eagle to sign the quitclaim deed, there was no evidence of duress or silent misrepresentation.

We review de novo a trial court's decision on a motion for summary disposition. *Detroit Free Press, Inc v City of Warren*, 250 Mich App 164, 166; 645 NW2d 71 (2002). The trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) when the court determines that the opposing party is entitled to judgment as a matter of law. *Id*.

In his brief on appeal, plaintiff initially argued that the trial court erroneously found that plaintiff failed to perfect title under the tax deed. Plaintiff later abandoned this argument during oral argument. Regardless, we find no merit with this issue because plaintiff failed to properly serve defendant Pennway notice of its redemption rights.

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[1] Defendant Forsythe is a grantee of record pursuant to a deed issued in 1968. Defendant Forsythe's successors in interest were defendants Calvin and Mildred Shubow.

[2] Defendant Pennway is a grantee of record pursuant to a deed issued in 1968. Defendant Pennway's successor in interest is defendant Irene Eagle.

[3] Defendants Anthony and Mary Vittiglio are grantees of record pursuant to a land contract assignment of interest executed in 1970.

Plaintiff's primary argument in this appeal is that the trial court erred in its determination that plaintiff failed to acquire ownership of the property by adverse possession. A claim of adverse possession requires clear proof that possession has been actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of fifteen years. *Kipka v Fountain*, 198 Mich App 435, 439; 499 NW2d 363 (1993); *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Where the defendant claims title under a tax deed, the period of limitations is ten years. MCL 600.5801(2). To claim by adverse possession, the party claiming ownership must show that the property owner of record has had a cause of action for recovery of the land for more than the statutory period. *Kipka*, *supra* at 439. The cause of action does not accrue until the property owner of record has been disseized of the land. *Id*., citing MCL 600.5829. Disseizin occurs "when the true owner is deprived of possession or displaced by someone exercising the powers and privileges of ownership." *Id*. The doctrine of adverse possession is strictly construed and every presumption is in favor of the holder of legal title. See *Sheldon v Michigan Central R*, 161 Mich 503, 512; 126 NW 1056 (1910).

Plaintiff claims adverse possession based on the following: the payment of taxes during the years 1977 through 1993, the retention of a surveyor, contacting the city of Romulus in 1981 to split the parcel, placing "for sale" signs on the property during various years, and contacting a broker to sell the property during the years 1981 through 1982 and 1984 through 1987. Plaintiff also claims to have entered the property at various times to inspect it.

Generally, the extent of the actions necessary to constitute adverse possession depends on the character of the land involved. See *Davids v Davis*, 179 Mich App 72, 83; 445 NW2d 460 (1989). The occupancy necessary to support a claim of adverse possession must be so visible, open, public, and notorious that the owner of the property will be clearly apprised that an adverse claim is being made. *Davy v Trustees of Protestant Episcopal Church*, 250 Mich 530, 533-534; 231 NW 83 (1930). More importantly, the possession must be continuous. *Beecher v Ferris*, 117 Mich 108, 110; 75 NW 294 (1898); *Duck v McQueen*, 263 Mich 325, 327-328; 248 NW 637 (1933). Acts that amount to nothing more than occasional trespasses or acts of ownership do not constitute continuous possession. See *Bankers Trust Co of Muskegon v Robinson*, 280 Mich 458, 464-465; 273 NW 768 (1937).

The "'paying taxes, or asserting title, or the common understanding in the neighborhood, or making surveys, or an occasional renting for trapping and shooting, is not sufficient to establish title by adverse possession.'" *Barley v Fisher*, 267 Mich 450, 452; 255 NW 223 (1934), quoting *Whitaker v Erie Shooting Club*, 102 Mich 454, 460; 60 NW 983 (1894). For example, in *Duck*, *supra* at 325, the Court considered what acts were sufficient to assert title by adverse possession where the land was a vacant piece of property. In that case, the Court found that acts that consisted of occasional contact with the property, such as cultivating lumber, removing timber, cutting trees and removing gravel for several years, were insufficient to establish adverse possession. *Id*. at 329. However, in *Davids*, *supra* at 72, this Court found that the plaintiff had established fee simple title of an undeveloped parcel of property by adverse possession where he took under color of title, paid property taxes, posted "no trespass" signs, built a fence, and placed posts and chains across the entrance. *Id*.

In the instant case, the disputed property is a wooded piece of land. Plaintiff claims to have had actual possession of the property since 1981. Although plaintiff allegedly paid several

years of taxes for the property, the payment of property taxes alone is insufficient to establish adverse possession. *Barley*, *supra*. Although plaintiff periodically posted "for sale" signs on the property, it appears the signs were always removed. According to the affidavits presented, plaintiff listed the property for sale several times and secured a broker to attempt to sell the property during various years. However, these were only intermittent attempts to sell the property. Plaintiff produced no evidence that he continuously possessed the property. Based on the affidavits presented, at most, plaintiff attempted to sell the property during the years 1981 through 1982 and 1984 through 1987. There is nothing to indicate plaintiff placed "no trespass" signs on the property, made improvements to the land by building fences or barriers, or took any other action on the property that would put one on continuous notice that plaintiff claimed ownership of the property. Under the circumstances, there is no evidence of continuous possession of the property for the statutory period; at best, plaintiff's possession consisted of sporadic attempts to sell the property. Therefore, the trial court properly granted summary disposition to defendants.

Finally, plaintiff also argues that the trial court erred in failing to void the quitclaim deed issued by defendant Eagle, on behalf of defendant Pennway, to defendant Covington Park. The evidence established that defendant Flynn went to defendant Eagle's home and requested that she sign a quitclaim deed for defendant Pennway's interest in the property. It is undisputed that at the time, there were no other witnesses or a notary present. After defendant Eagle signed the deed, defendant Flynn left a $50 bill on the table. In an affidavit presented to the lower court, defendant Eagle averred that at the time she signed the deed it was her belief that defendant Pennway had no interest in the property and that because of its lack of interest, signing the deed would not create any conflict or ambiguity with regard to the title to the property. Defendant Eagle claimed that she was reluctant to sign the deed at first, but defendant Flynn explained to her that by signing the deed, she was only transferring and conveying any interest Pennway had in the property, if it had any interest, and that defendant Eagle was not guaranteeing or warranting that Pennway had any interest.

Plaintiff essentially asserts misrepresentation and silent fraud on defendant Flynn's part for failing to disclose the significance of the quitclaim deed and of the alleged redemption right of defendant Pennway. Beyond mere citation to MRPC 4.1, which addresses a lawyer's duty when representing a client to refrain from knowingly making a false statement to third persons, and MCL 565.8 and MCL 565.47, which address the witnessing and notarization of deeds, plaintiff cites no law and gives no argument for his position. We will not search for argument and support for plaintiff's position. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). However, we will briefly address the merits of this issue.

Although plaintiff argues the deed was invalid because it was neither witnessed nor acknowledged as required under MCL 565.8 and 565.47, an instrument is good between the parties even though it was not executed with the requirements necessary for it to be recorded. *Irvine v Irvine*, 337 Mich 344, 352; 60 NW2d 298 (1953); *Kerschensteiner v Northern Michigan Land Co*, 244 Mich 403, 417; 221 NW 322 (1928). Therefore, the lack of these requirements at the time the parties signed the deed does not necessarily invalidate the deed.

To the extent plaintiff claims fraud, there is no evidence defendant Eagle inquired into the reasons for the quitclaim deed, nor is there any evidence defendant Flynn was required to

disclose any information. Actionable fraud consists of the following: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly; (4) the defendant made the representation with the intention that the plaintiff would act on it; (5) the plaintiff acted in reliance on it; and (6) the plaintiff suffered damage. *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). Silent fraud arises from the suppression of a material fact that a party in good faith is duty-bound to disclose. *Id*. at 28-29.

Although plaintiff alleges that defendant Flynn failed to disclose the significance of defendant Pennway's redemption right, there is no evidence that defendant had a duty to disclose this information. At the time defendant Eagle signed the deed, it was undecided whether Pennway had any rights. Defendant Eagle voluntarily signed the quitclaim deed and delivered it to defendant Flynn. There is no evidence defendant Eagle inquired into the reasons for the deed or the ramifications of her signing the deed. Therefore, there is no evidence defendant Flynn was duty-bound to disclose the information.

We note that although the trial court raised an issue regarding plaintiff's rights with regard to reimbursement of taxes plaintiff paid on the subject property, the court did not rule on this issue. Therefore remand is necessary to determine plaintiff's rights, if any, to reimbursement of the taxes paid.

Affirmed, but remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage